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# SANITARY LEGISLATION.

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## COURT DECISIONS.

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### NEW YORK SUPREME COURT, APPELLATE DIVISION, FOURTH DEPARTMENT.

#### Sewage Disposal—Damages Awarded Against a City for Pollution of a Stream by Municipal Sewage.

LUTHER et al. v. VILLAGE OF BATAVIA, 154 N. Y. Supp., 784. (July 7, 1915.)

The inhabitants of a city or village collectively have no more right to pollute the waters of a stream than has a single individual, and if a city empties its sewage into a stream and damage results to the owners of land along the stream the city is liable for damages. The continuance of such acts may be restrained by injunction, and if the injunction is violated the municipal officers who are responsible for such violation may be punished for contempt.

KRUSE, P. J.: The inhabitants of a city or village, collectively, have no more right to pollute the waters of a stream than a single individual, and where a city empties its sewer system into a living stream, as the defendant has done in this case, and damage results to the riparian owners, it must respond in damages. If such acts are continued, and a proper case is made out, an injunction should issue restraining such unlawful acts; and if the village persists in defiance of the injunction, the village and local authorities responsible for such violation should be punished for contempt. That happened to this defendant not so long ago. (*Swezey v. Village of Batavia*, 121 App. Div., 926, 106 N. Y. Supp., 1146; affirmed 191 N. Y., 499; 84 N. E., 1121.) It may be difficult for some communities to take care of the sewage in any other way than was done here, but that affords no justification or excuse for harming others who are situated as was the plaintiff. Perhaps this warning applies more to others than to this defendant, as we understand that other provision has now been made by it for taking care of its sewage.

It is unnecessary to take up the various points in detail which have been urged for reversal of this judgment. I think the evidence fairly shows, as the plaintiff contends, that the waters of this stream became contaminated with offensive refuse matter from the sewers; that the waters of the stream were covered with a scum, gave off at times offensive odor, became so filthy that the cattle would not drink of it, and that the fish died; and that the filthy odor of the creek caused discomfort and annoyance to the plaintiff, thus decreasing the rental value of his premises. I am further of the opinion that the damages awarded are not excessive, and that no error was committed so prejudicial to defendant as to require or justify a new trial.

The judgment should be affirmed, with costs. All concur.